

1 375, 377 (1994). Therefore, before a federal court may consider the merits of a case, it must
2 first determine whether it has proper subject matter jurisdiction. *Scott v. Pasadena Unified Sch.*
3 *Dist.*, 306 F.3d 646, 653–54 (9th Cir. 2002). As a general rule, “[t]he defense of lack of subject
4 matter jurisdiction cannot be waived, and the court is under a continuing duty to dismiss an
5 action whenever it appears that the court lacks jurisdiction.” *Augustine v. United States*, 704
6 F.2d 1074, 1077 (9th Cir. 1983); *see also Moore v. Maricopa Cnty. Sheriff’s Office*, 657 F.3d
7 890, 894 (9th Cir. 2011) (noting the court’s obligation to determine *sua sponte* whether it has
8 subject matter jurisdiction).

9 **III. DISCUSSION**

10 At issue here is whether the Court has supplemental jurisdiction over Stevens’ state law
11 tort claims based on Local 872’s federal breach of fiduciary duty claim. A district court has
12 jurisdiction to adjudicate a pendent state law claim if there is a federal claim so related to it that
13 they form part of the same case or controversy. *See* 28 U.S.C. § 1337(a). A state law claim is
14 part of the same case or controversy when it shares a “common nucleus of operative fact” with
15 the federal claims. *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). “[A] plaintiff’s
16 claims [must also be] such that he would ordinarily be expected to try them all in one judicial
17 proceeding.” *United Mine Workers of Am. V. Gibbs*, 383 U.S. 715, 725 (1966).

18 Here, Stevens’ state law tort claims do not arise out of a common nucleus of operative
19 facts with Local 872’s breach of fiduciary duty claim. Local 872’s breach of fiduciary duty
20 claim concerns a number of alleged wrongful acts that occurred throughout the course of
21 Stevens’ employment at Local 872. (*See* Compl. ¶ 11) (“Stevens breached [his duties] by using
22 property and funds of Local 872 for his own purposes, i.e., to drive out of State to purchase
23 lottery tickets during work hours, and by failing to perform the duties of a field agent and
24 protect the interests of the Union and its members.”). In contrast, Stevens’ state law tort claims
25 arise out of an isolated confrontation between Stevens and two supervisors. (*See* Counter

1 Compl. ¶ 15). This confrontation occurred shortly after Stevens' employment had terminated.
2 (See Stevens Dep. 130:9–18, Ex. 1 to Hillman Decl., ECF No. 48).

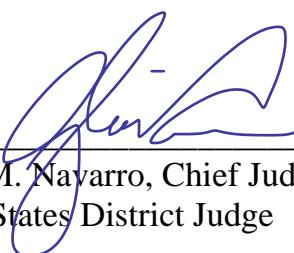
3 The state and federal causes of action are therefore based upon completely different sets
4 of facts. While Stevens' state claims focus on an isolated post-termination confrontation
5 between him and two other employees, the federal claim focuses on a series of unrelated
6 actions by Stevens that occurred throughout the course of his employment. There exists no
7 evidentiary overlap whatsoever between these claims. As these claims do not arise from the
8 same case or controversy, the Court lacks supplemental jurisdiction to hear Stevens' state law
9 tort claims.¹

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that Stevens' Third Party Complaint and Counterclaim is
12 **DISMISSED without prejudice** for lack of federal subject matter jurisdiction.

13 **IT IS FURTHER ORDERED** that the Motions for Summary Judgment, (ECF Nos. 47,
14 50), are **DENIED as moot**.

16 **DATED** this 25 day of March, 2017.

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Gloria M. Navarro, Chief Judge
United States District Judge

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25 ¹ The Court notes that because jurisdiction does not exist under § 1367(a), the discretionary considerations of § 1367(c) do not apply.